



FITNESS AND PROBITY STANDARD FOR TRUSTEES

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BASIS

The Fitness and Probity Standard is made pursuant to section 3 of Statutory Instrument 69 of 2020, which empowers the Commission, whenever it considers it necessary, convenient and in the best interest of policy owners and pension and provident fund members, to issue general guidelines and standards, which may provide for risk management and corporate governance practices to be observed by the insurance and pensions industry.

1. Background

- 1.1.Trustees should be subject to minimum suitability (or non-suitability) standards in order to ensure a high level of integrity, competence, experience and professionalism in the administration of the pension fund. The governing body should collectively have the necessary skills and knowledge to oversee all the functions performed by a pension fund, and to monitor those delegates and advisors to whom such functions have been delegated."
- 1.2.The Commission has noted the generality of the fit and probity requirements provided through the Pension and Provident Funds regulations, Statutory Instrument 323 of 1991, as amended by Statutory Instrument 80 of 2017. Due to this generality, there has been some inconsistencies in the interpretation and application of the requirements. Therefore, this standard seeks to clarify and give context to the regulatory requirements.
- 1.3.Further the role of Trustee has evolved, which calls for a review of the minimum academic qualifications that one should possess in order to qualify for election or appointment as trustee.

2. Qualifications

- 2.1.Section 6B. (1) of the Regulations provides that:
"No person shall be appointed, elected or continue to act as a trustee unless he or she possess such qualifications and additionally, or alternatively, has such experience or expertise as may be required for the proper administration of the fund."
- 2.2.Cognisant of the generality of the above section and lack of clarity on the minimum qualifications, with effect from the date of issuance of this standard, the minimum qualification that a trustee or a person who wishes to become a trustee shall be at Diploma level.

2.3. Possession of the Diploma shall not be construed as sufficient to occupy the position of a trustee. The qualifications and knowledge which a new trustee brings to the Board must be considered together with the qualifications and knowledge of the other existing trustees, such that, collectively, such knowledge and skills are adequate to enable all the trustees of the fund to ensure the sound and prudent management of that fund. Further to possession of the Diploma, the trustee shall meet the additional requirements under section 6B(2) of the Regulations.

2.4. The Commission recommends that trustees should review their own knowledge and understanding at least annually against the scope of this guidance and the Pensions Regulations.

3. Discharge of Duties

3.1. Section 6E (2)(c) of S.I 80/2017 provides that every trustee shall, in the exercise of his or her powers and discharge of his or her duties apply the care, diligence and skill that a reasonable and prudent person would exercise in comparable circumstances. Skill and diligence require trustees to be knowledgeable about the responsibilities and duties that are essential for them in terms of the Law and the Fund's rules. Improper or ill-advised decisions can be costly to the fund and detrimental to the fund's participants and beneficiaries.

3.2. The exercise of care and prudence requires acting with the appropriate levels of care, skill, and diligence that a person acting in a like capacity and familiar with such matters would use under the same circumstances.

3.3. In the context of serving as a trustee, prudence requires:

- a) Acting in a judicious and transparent manner to avoid prejudicing fund members and beneficiaries.
- b) Acting in good faith, without improper motive or purpose.
- c) Exercising power and discretion consistently.

- d) Following the investment parameters set forth by the fund's documents and applicable regulation.

3.4. Trustees typically outsource some functions and employ experts for advice. These people partner with the trustees in carrying out the responsibilities set out in the Regulations. However, external third-party service providers and professional consultants may have less accountability or vested interest in the outcome of actions resulting from their advice.

3.5. Thus, trustees can rely on external third-party service providers and professional consultants provided that the trustees have made reasonable and diligent effort to:

- a) Determine that the service providers act with appropriate skill, competence, and diligence.
- b) Determine that third-party experts are independent and free of conflict of interests and have the proper incentives to act in the best interests of the fund's participants.
- c) Ensure that the decisions have a reasonable and adequate basis, and that the decision process is adequately documented.

3.6. Although the delegation of certain trustee responsibilities to experts is a prudent option, the trustees retain the ultimate fiduciary duty and responsibility to monitor the experts and to ensure that the delegated responsibilities are carried out appropriately.

4. Conflict of Interests.

4.1. Section 6B (5)(e) of the Regulations provides that

“No person shall be qualified for appointment or election or continue acting as trustee if there is a material conflict of interests between the trustee and his or her role as such.”

4.2. A material conflict of interest often arises in circumstances, where the trustee:

- a) Has a fiduciary obligation to act in the best interests of the fund members while at the same time he or she has an obligation to a different beneficiary, normally the employer, in relation to that decision. This gives rise to a possible conflict with his first fiduciary duty. A clear example is persons who are employed as Head of the Employer's Finance function,
- b) Holds an executive position and by virtue of this position his or her presence on the Board can inhibit open discussions or result in decisions, actions or inactions that are not in the best interests of fund members. This, in turn, may result in the trustees acting improperly, leading to a perception that the trustees have acted improperly, and may invalidate a decision or transaction.
- c) Is a trade union representative. This is due to the fact that the trade union representative's role is focused on active members of the pension scheme, who are only one class of beneficiary. This bias may result in conflicted decisions.
- d) Provides a service to the fund or is employed/closely related to a person that provides a service to the fund. Examples are employees of the fund's Administrators, Investment Managers, Auditors etc.

4.3. It is acknowledged that appointing senior staff of the employer who hold executive positions as trustees can bring additional benefits which may not be easily replaced. They may make substantial contributions to the operational effectiveness of the scheme. However, it needs to be recognised that such trustees face conflict of interests by virtue of their position. In the exceptional circumstance that the Board has such trustees, the Board should ensure that there is adequate mechanisms to declare and avoid such conflicts including recusals where appropriate.

4.4. Trustees should endeavour to avoid actual and potential conflict of interests between their work with the fund and other outside interests. Conflicts of interests are many and varied, but the interests of the fund members and beneficiaries are paramount.

4.5. Where conflict of interest may not be avoided, trustees should recognise and take appropriate measures to deal with and manage the conflict, such as:

- a) Disclosing all real or perceived conflict of interests.
- b) Abstaining from a vote or excluding themselves from any deliberations in which they are in direct conflict.
- c) Ensuring that the fund has procedures in place to manage and disclose any such conflicts. Policies should be appropriate to the circumstances and level of control that the trustees have over decisions of the fund.
- d) Documenting and disclosing the acceptance of any gift or entertainment.

4.6. The overriding principle is that trustees should act in the best interests of the participants of the pension fund and disclose any conflicts of interest.

5. Confidentiality

5.1. Trustees hold strictly confidential, all information communicated to them in the context of their duty to the fund, and they must take all reasonable measures to preserve this confidentiality. This discretion also applies to information related to individual members and beneficiaries. Effective trustees ensure that the plan has in place a privacy policy that addresses how confidential information will be collected, used, stored, and protected and should ensure that this policy extends to external service providers and other persons to whom duties are delegated.

6. Obligations Towards Fund Members

Disclosures

6.1. Section 6E (1)(b) provides that the trustees of every registered fund shall be responsible for directing, controlling and supervising the operations

of the fund in accordance with the Act and the rules of the fund, and for that purpose the trustees shall-

(b) Ensure that members of the fund are adequately informed of their rights, benefits and duties in terms of the rules of the fund;

6.2.Trustees should ensure that clear, timely, and effective communication practices are developed and maintained such that information is communicated to the members timely.

6.3.Trustees have a responsibility to ensure that the information that is provided to members and beneficiaries is accurate, pertinent, and complete such that members are well informed about the status of the fund, their benefits, and responsibilities

7. Impartiality

7.1.Section 6E (2)(e) of S.I 80/2017 provides that every trustee shall, in the exercise of his or her powers and discharge of his or her duties impartially towards all members.

7.2.To maintain the trust that members of the pension fund place in them, effective trustees deal with all fund members and beneficiaries in a fair and objective manner. Effective trustees do not give preferential treatment to beneficiaries within a particular class of members or otherwise favour one class over the other. Many funds have different types of participants: **active members** who are making contributions and accruing benefits, **deferred members** who have left employment but have not transferred their assets and will draw future benefits when reaching retirement age, and **retirees**, including **beneficiaries** of deceased members, who are currently drawing retirement benefits. Effective trustees balance the interests of all types of members, treating each class of members fairly and ensuring that benefits and accumulation adjustments are done in a fair and transparent manner.

8. Enforcement

- 8.1.Trustees are required to uphold the above fitness and probity requirements. In terms of section 6B(6) 8), the Commissioner may, in the public interest, remove from office any trustee who, in terms of subsection 6B(4), is disqualified to hold office as such.
- 8.2.The commission expects that given the clarifications above, all funds shall immediately move to ensure that the fund's requirements for trustee election/appointment comply with this standard.
- 8.3.The Commission shall also invoke the provisions of section 5 of the Insurance and Pensions Commission (Issuance of General Guidelines and Standards) Regulations, 2020 published in Statutory Instrument 69 of 2020, where a fund, insurer or fund administrator fails to comply with the provisions of these Standards.

END OF DOCUMENT